

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

NUCLEAR DEVELOPMENT LLC,)
)
Plaintiff,)
)
v.) Case No.: 5:18-CV-01983-LCB
)
TENNESSEE VALLEY) **OPPOSED**
AUTHORITY,)
)
Defendant.)

**DEFENDANT'S MOTION TO ALTER OR AMEND FINAL JUDGMENT
AND FOR ADDITIONAL FINDINGS**

Defendant Tennessee Valley Authority (“TVA”) moves this Court pursuant to Fed. R. Civ. P. 59(e) to alter or amend its Final Judgment (Doc. 247) to change the rate of pre-judgment interest to be paid by TVA to 6 percent per annum and to state that the post-judgment rate shall also be 6 percent per annum. In addition, TVA moves the Court pursuant to Fed. R. Civ. P. 52(b) to make an additional finding of fact that Plaintiff Nuclear Development (“ND”) and TVA agreed in the Bellefonte Nuclear Plant Site Purchase and Sales Agreement (“Agreement”) (Pl.’s Ex. 1) that with respect to any court proceeding between the parties, the non-prevailing party would pay pre- and post-judgment interest at the rate of 6 percent per annum.

In support of these motions, TVA offers the following grounds:

1. In the Agreement, the parties included the following provision as
Section 33:

With respect to any court proceedings between the Parties, the non-prevailing Party shall pay the prevailing Party (i) all court costs, and (b) pre- and post-judgment interest at the rate of six percent (6%) per annum on the amount awarded from the date of the applicable breach until paid.

Pl's Ex. 1, § 33.

2. In its Final Judgment, the Court entered judgment “in favor of Nuclear Development in the amount of \$22,950,000, plus prejudgment interest at a rate of 7.5% per annum, running from December 30, 2018 to the date of th[e] final judgment.” Doc. 247.¹

3. ND and TVA agreed in the Agreement that “federal law shall govern the validity, interpretation, and enforceability of this Agreement.” Pl.’s Ex. 1, § 31.

4. Under federal law, “[w]hen the contractual language is unambiguous on its face, [the] inquiry ends and the plain language of the Agreement controls.” *Coast Fed. Bank, FSB v. United States*, 323 F.3d 1035, 1040–41 (Fed. Cir. 2003).

5. The Eleventh Circuit has held that unambiguous contractual agreements as to the rate of pre-judgment interest should be enforced. *See, e.g., Merrill Stevens Dry Dock Co. v. M/V YEOCOMICO, II*, 329 F.3d 809, 816 (11th

¹ TVA did not breach Section 11(b) of the Agreement because it did not terminate the Agreement, and the Court made no finding that TVA terminated the Agreement. TVA expressly preserves its position that it did not breach Section 11(b).

Cir. 2003). Likewise, so long as the parties' intent to apply an agreed post-judgment interest rate is "clear, unambiguous, and unequivocal," that agreed post-judgment rate overrides the post-judgment rate otherwise provided for in 28 U.S.C. § 1961. *Walker v. Life Ins. Co. of N. Am.*, 2021 WL 2982108, at *2 (N.D. Ala. July 15, 2021) (citation omitted).

6. Because the provision in the Agreement that the pre-judgment interest rate should be 6 percent per annum is clear, unambiguous, and unequivocal, this Court should amend its order to enforce the agreement of the parties on that rate for both pre- and post-judgment interest.

WHEREFORE, PREMISES CONSIDERED, TVA prays that this Court will (a) alter or amend its Final Judgment to change the rate of pre-judgment interest to be paid by TVA to 6 percent per annum and to state that the post-judgment rate shall also be 6 percent per annum; and (b) make an additional finding of fact that ND and TVA agreed in the Agreement that with respect to any court proceeding between the parties, the non-prevailing party shall pay pre- and post-judgment interest at the rate of 6 percent per annum.

Respectfully submitted this 17th day of September, 2021.

/s/ Matthew H. Lembke
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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2021, a true and correct copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record:

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